



# **PLANNING COMMISSION**

## **MINUTES**

**February 23, 2011**

**4:00 P.M.**

**CITY OF FREDERICKSBURG  
715 PRINCESS ANNE STREET  
COUNCIL CHAMBERS**

### **COMMISSION MEMBERS**

**Roy McAfee, Chair  
Dr. Roy Gratz, Vice-Chair  
Berkley Mitchell, Secretary  
Susan Spears  
Ricardo Rigual  
Edward Whelan, III  
Shawn Lawrence**

### **CITY STAFF**

**Ray Ocel, Director of Planning  
Debbie Ward, Zoning Officer**

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### **1. CALL TO ORDER**

The February 23, 2011 Planning Commission meeting was called to order at 4:00 p.m. by Chairman Roy McAfee.

### **2. PLEDGE OF ALLEGIANCE**

### **3. ADOPTION OF MINUTES**

- February 9, 2011 Planning Commission Minutes – Approved/adopted as submitted.

### **Unfinished Business/Action Items**

- 1. SE 2011-01: Mary Washington Healthcare** – Special Exception request in order to erect three free standing signs, two at the intersection of Jefferson Davis Highway and Mary Washington Boulevard and one at the intersection of Cowan Boulevard and Hospital Drive that are in excess of the maximum height and size requirements contained within the sign ordinance. Each of the three signs are proposed to be 30' tall and contain 229 square feet of sign area.

Mr. Ocel noted that at the February 9<sup>th</sup> meeting, one member of the public spoke in opposition to the application and Commissioners raised a number of questions to the applicant. The Commission also directed a number of questions for staff to consider. Specifically, Mr. McAfee liked the idea of painting white H Hospital signs on the Jefferson Davis Highway pavement. The lane to be painted would be the left lane of the northbound lanes between College Avenue and Mary Washington Blvd. Staff posed this question to the Public Works Director and he is reviewing the idea with the Superintendent of Public Works, who is well versed in regulations as they relate to lane markings. Staff will report Public Works input at the Planning Commission meeting.

Mr. Lawrence noted that the existing H hospital signs along Jefferson Davis Highway need to be placed in better locations. Staff discussed this with the Public Works Director and he said that the Public Works Department erected the signs and that their location(s) can be changed with input from the Hospital.

Mr. Whelan noted that he thought that the sign on the east side of Jefferson Davis Highway was too close to the intersection and therefore, visitors in the right lane of Jefferson Davis Highway will either want to swerve to the left to make the left turn onto Mary Washington Blvd. or have to go past the hospital entrance. He suggested a smaller sign be erected on the east side of Jefferson Davis Highway that is mid-way between Mary Washington Blvd. and College Avenue. Mr. Gratz also noted his concern with this same sign.

Mr. McAfee requested that staff obtain a graphic(s) from the applicant that shows signs in conformance with current sign regulations at their respective requested locations in the field. The applicant's graphics design firm provided the graphics to depict these signs in the field. Graphic A.10 shows the sign being requested on the left side of the graphic and three signs next to it that meet current sign regulations for the locations being sought. This graphic shows clearly the difference between the sign being requested and signs permitted by the City's sign regulations. In addition, graphics A.10C, A.11C, A.12C and A.13C shows the three permitted signs shown on graphic A.10 in their proposed locations in the field. Commissioners will note that due to their respective sizes and the location from where the picture is taken that they are difficult to see with the exception of the Mary Washington Hospital sign that is shown directly behind the UMW parking sign on graphic A.10C. Mr. Ocel said that he had also discussed placing an "H" on the pavement/roadway but that Public Works has a few issues with that and would like to have additional information. Since paint would easily wear out, a possible suggestion could be that thermal plastic be used instead of paint. Further investigation is required.

The applicant has provided a letter dated February 17, 2011 that updates the request. Mr. Fletcher states in the letter that he is withdrawing the request for the sign on the east side of Jefferson Davis Highway and in doing so wants to work with the City on better placement of the blue "H" signs as well as the other options mentioned to improve visibility. The request for the other sign on Jefferson Davis Highway remains the same as Mr. Fletcher notes on page 1 of his letter.

Mr. Fletcher notes that the Cowan Blvd. sign request has been revised so that the request is for a sign that is 25' tall (as opposed to 32'6") and contains the original 229 square feet of sign area.

Mr. Ocel said that the staff recommendation remains as previously stated:

Mary Washington Boulevard sign: maximum height of 29' and maximum sign area of 169 square feet; Hospital Drive sign: maximum height of 20' and maximum sign area of 93 square feet.

Dr. Gratz noted that the difference between staff's recommendation of 29' for the sign proposed on the west side of Route 1 and the applicants request for 32' is three feet, of which appears to only be the sign pole extending the additional three feet.

Mr. Ocel said his overall recommendation is 29 feet for the entire sign, including the pole, which is nine feet (9') over the allowable height for that area.

Mr. Lawrence asked how large the University of Mary Washington sign is that is shown on exhibit A 10 C.

Mr. Ocel said that the sign Mr. Lawrence refers to is permitted in that zoning.

Ms. Spears said that the objective for a larger sign is for persons under duress and not familiar with the area. Mr. Fletcher's letter, she said, states why the sizes applied for are required. She said the three extra feet would assist in accomplishing this goal.

Mr. Ocel said he believes it would be better reduced to 29' and being located in the corridor warrants this size and that this sign would dwarf other signs in the area otherwise.

Ms. Spears said the sign as proposed by the applicants does not appear that it will dwarf the other signs.

Mr. McAfee asked if Mr. Ocel's opinion/recommendation is based on trying to keep the height closer to the compliant figure and aesthetics more so than the technicalities of whether the sign is visible at proper distance.

Mr. Ocel said he is trying to balance the need for an additional size sign for the benefit of people visiting the hospital but at the same time trying to keep it into some symmetry within the other signs and within the corridor. We are trying to strike that balance between the both. So, he said, we are allowing a taller sign and larger square footage and still trying to fit it within the corridor (Jefferson Davis Corridor).

Mr. McAfee asked Mr. Ocel if he was prepared to say, on a technical ground, the sign expert they hired is wrong about their height requirements.

Mr. Ocel responded no, I didn't say that.

There were no further Commissioner comments.

Mr. McAfee called for the recommendation.

Ms. Spears made a motion to recommend approval of the special exception request (SE2011-01) by Mary Washington Healthcare, with the following provisions:

- *Mary Washington Boulevard sign, which is Route 1 south, top of the sign face be 29' 2", with the aesthetic sign pole extending to 32'6" and including the signage face area of 229 square feet.*
- *Cowan Boulevard Sign to be 25' tall, containing 229 square feet of sign area and no sign placed on the east side of Route 1 north.*

Mr. McAfee noted that for clarification, the motion is to approve that of the requests made by Mr. Fletcher in his February 17, 2011, addressed to the Planning Commission.

Mr. Rigual seconded the motion.

Motion carried by a vote of 6 – 1, with Dr. Gratz voting against the motion.

2. **ZOTA2011-02:** Request to amend the City Code Chapter 78, Article III, "Zoning," by adding a new Section 78-936.5 to address new State Code legislation in regard to the issuance of a written order, requirement, decision or determination of vested rights by the Zoning Administrator.

Mr. Ocel noted that at the February 9<sup>th</sup> public hearing, no member of the public spoke in regard to this text amendment. Commission members raised several questions in regard to the amendment and staff addressed them at the meeting. Mr. McAfee noted that he thought that a person seeking a determination should provide the names and mailing addresses of adjacent property owners

since the Zoning Administrator will be required to notify adjacent property owners of determinations being made that may affect their property. Staff will address this requirement by making it part of the application process.

Mr. McAfee asked Mr. Ocel if he is opposed to considering notification of abutting property owners.

Mr. Ocel said he is not opposed to considering although he does not know he is sold on it. He noted that he does not now notify adjacent property owners when making a determination. He said he did not know what input they would give them nor what input he would take. He said it is a determination he has to make, and at times in conjunction with the City Attorney.

Mr. Rigual asked if these are the situations such as the Sunken Well situation.

Mr. Ocel said that situation is a little different and that this situation is based more on "use" and "density."

Mr. McAfee said he is aware that what is proposed may match "legal requirements" but that believes it would be better and more appropriate and "city-friendly" to get neighboring property owners' opinions before a determination is made that to force them into an appeal process.

Mr. Rigual said he believes the appeal process is set up for a hearing like we have at the BZA, where people can show up and voice their opinion. He said this Board is set up for that and that this is the forum that has been established for appeals. He said he believes that if we allow for notice before a determination is made that staff would spend most of the day holding hearings with adjacent property owners for hours prior to being able to make the determination. When staff is asked for a determination, he has the authority to make a determination based on his understanding of the Zoning Ordinance and the laws as he is apprised by the City Attorney. If someone thinks the determination is wrong, he said, he believes the forum for a hearing is properly before the Board of Zoning Appeals, as the BZA is the adjudicatory body. He said he believes it would be an incredible burden on staff should notification be made prior to a determination.

Mr. McAfee said he had concerns and that it does not seem to be a very friendly way to do business. However, he said he would defer to Mr. Rigual's expertise on the issue.

Mr. Rigual made a motion to recommend approval of the Zoning Ordinance Text Amendment, as proposed.

Mr. Mitchell seconded the motion.

Motion carried by a unanimous vote of 7 – 0.

3. **ZOTA2011-03:** Request to amend the City Code Chapter 78, Article III, "Zoning," by amending Section 78-1104.5, "Civil Penalties" to in order to make the illegal use of land or a structure a criminal penalty as opposed to a civil penalty.

Mr. Ocel said that at the February 9<sup>th</sup> public hearing, no member of the public spoke in regard to this text amendment. Commission members raised a number of questions in regard to the change and under what circumstances it would be used and staff addressed those at the meeting.

Mr. Rigual asked if there are specific cases that caused the need for the change.

Mr. Ocel said that a couple scenarios have happened, overcrowding being one, where we can begin by fining them and whether they pay or not is immaterial because even if they pay the fine the violation is not corrected. The judge in the General District court can impose the fine but he cannot tell them to clean it up so then the City has to go up the street to the Circuit Court. He said the current process is tying the City's hands to move more quickly to resolve these types of issues.

Mr. Rigual said he has looked at the statute and noted that what we are talking about in doing it this way, is that staff still has the flexibility and authority to handle issues as the Zoning Administrator and that this would be used in probably the most extreme cases. He said doing it under the current process, it is wasting a significant amount of time and this revision to the text would provide for fines and an order by the court to "do something now."

Mr. Ocel agreed and said that all the City is interested in is for folks to get into compliance.

Dr. Gratz asked if overcrowding is currently a criminal offense.

Mr. Ocel said the only thing that would be changed to criminal is the "land use." He noted that on page two of the proposed ordinance shows those items that would remain as a civil penalty.

Dr. Gratz made a motion to recommend approval of the Zoning Ordinance Text Amendment, as proposed.

Mr. Rigual seconded the motion.

Motion carried by a unanimous vote of 7 - 0

## **OTHER BUSINESS**

### **Planning Commissioner Comment**

- Mr. McAfee informed Commissioners that he had attended the Pre Plan Meeting on Tuesday and that the Haven project developers are proposing to construct an additional and equal amount of units to their existing project, which was issued a special use permit by the City on April 27, 2010. This new special use permit request will be submitted in the next couple months.

### **Planning Director Comment**

- Mr. Ocel noted that Council approved the special exception request for Humanities Foundation to construct apartments for elderly housing.
- Mr. Ocel noted that no new applications have been received by the Planning Department for the March 9, 2011 Planning Commission meeting and therefore there will be no meeting on that date. However, for April, the Planning Department expects to have applications for a special use permit request from the City to establish a neighborhood park; Dominion Virginia Power for the expansion of an existing electrical utility substation; Phase II of the Haven; Chaplin Youth Center for an extension to their previously approved permit; a Comprehensive Plan Amendment. Also, Fredericksburg Park Subdivision has now become a by-right request and will be coming back for subdivision approval.
- Mr. Ocel said the Courthouse proposals are due by March 1<sup>st</sup>. Presentations are to take place on March 15 and March 16.
- Mr. Ocel noted that he had included in the Commissioner's packets a copy of the revised adjustments to the Residential Zoning Districts and that City Council has

referred the amendments to the Commission for further review and recommendation. He asked if the Commission was ready to move forward with these amendments. Ms. Spears noted that she would like more time to absorb the document. Mr. McAfee suggested a work session be held to discuss the amended document. Staff and Commissioners agreed to hold the work session on March 23, 2011 at 4:00 p.m.

**ADJOURNMENT**

Meeting adjourned



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Roy McAfee, Chair